



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2011

Dr. Carol Simpson  
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OR2011-04226

Dear Dr. Simpson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412465.

The Hallsville Independent School District (the "district"), which you represent, received requests from two separate requestors for documents pertaining to communications between the district and the Texas Education Agency regarding an investigation of a named former district employee. You state the district will provide some of the requested information to the requestors. You also state the district will redact social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code. You also state, and provide documentation showing, the district notified the named former employee of the requests for information and of his right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from a representative of the former employee. We have considered the submitted arguments and reviewed the submitted information.

You seek to withhold the former employee's college transcripts submitted as pages 000006 through 000010 and 000014 through 000016. Section 552.102(b) of the Government Code excepts from disclosure all information in transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. *Id.*

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

§ 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the former employee's name, courses taken, and degree obtained, the district must withhold pages 000006 through 000010 and 000014 through 000016 pursuant to section 552.102(b) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as sections 411.0845 and 411.097 of the Government Code. Section 411.0845 provides, in relevant part:

(a) The [Department of Public Safety ("DPS")] shall establish an electronic clearinghouse and subscription service to provide criminal history record information [("CHRI")] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

*Id.* § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides, in part, "[a] school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]" *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS's electronic clearinghouse. Educ. Code § 22.083(a-1)(1).

Section 22.08391(d) of the Education Code states any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides, in relevant part:

(d) [CHRI] obtained by a school district . . . in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the Texas Education Agency;

(C) the State Board for Educator Certification;

...

(E) by court order[.]

Gov't Code § 411.097(d). The submitted document labeled as page 000003 consists of information obtained by the district through DPS's electronic clearinghouse. Therefore, the district must withhold this information under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code.<sup>2</sup>

Section 552.101 also encompasses section 21.048 of the Education Code, which addresses educator certification examinations. Section 21.048(c-1) provides:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], unless:

(1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or

(2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You contend the submitted pages labeled as 000001, 000002, and 000011 through 000013 are confidential under section 21.048(c-1) because they are score reports of educator certification examinations pertaining to the former employee at issue. You state sections 21.048(c-1)(1) and 21.048(c-1)(2) do not apply in this instance. Based

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your argument against disclosure for this information.

on your representations and our review, we agree pages 000001 and 000011 through 000013 consist of educator certification examination results and the district must withhold this information under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. Page 000002, however, consists solely of general instructions on how to read one of the examination score reports. You have failed to demonstrate how section 21.048(c-1) applies to this information. Consequently, the district may not withhold page 000002 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

We note the information on page 000002 may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, any information on page 000002 that is protected by copyright must be released in accordance with copyright law.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. See Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “administrator” in section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. See ORD 643 at 4. The Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. See *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006).

You assert the memoranda, e-mail, administrator appraisal evaluations, and handwritten notes submitted as pages 000017 through 000058 are confidential under section 21.355. Upon review, we agree the memoranda, evaluations, and notes constitute evaluations for purposes of section 21.355. You state the documents at issue pertain to the former employee who was a certified administrator and was performing the functions of an administrator at the time of the evaluations. Therefore, the district must withhold pages 000017 through 000027 and 000029 through 000058 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. You have not demonstrated, however, nor does the submitted information reflect, how the e-mail submitted as page 000028 is an evaluation of an administrator. Consequently, the district may not

withhold page 000028 under section 552.101 of the Government in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs medical records. *See* Occ. Code §§ 151.001-167.202. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). You claim the copy of the blood donor identification card on page 000004 is medical information protected by the MPA. You have failed to demonstrate, however, how this information constitutes a medical record or information obtained from a medical record. Consequently, the district may not withhold this information on the basis of the MPA.

We note a portion of the blood donor identification card on page 000004 may be confidential under common-law privacy and you claim a portion of the remaining information is confidential under common-law privacy. Section 552.101 of the Government Code also encompasses common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The blood donor card on page 000004 contains the former employee's blood type. We have marked this information, which we

find is not of legitimate public concern. Therefore, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also seek to withhold the former employee's request for sick leave bank membership submitted as page 000005 under common-law privacy. You have not explained, however, nor can we discern, how the employee's decision to participate in the sick leave bank is protected under common-law privacy. *See* Open Records Decision Nos. 423 at 2 (1984) (scope of public employee privacy is narrow), 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). Consequently, the district may not withhold page 000005 under section 552.101 of the Government Code in conjunction with common-law privacy. As you have not claimed any other exceptions to disclosure for this information, it must be released.

You claim some of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Page 000004 contains a copy of the former employee's Texas driver's license. Thus, the district must withhold this information, which we have marked, under section 552.130 of the Government Code.<sup>3</sup>

We note some of the remaining information may be excepted under section 552.117 of the Government Code.<sup>4</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We have marked the former employee's home address and other personal information in the remaining information on pages 000004 and 000028. You have not informed us whether or not the former employee chose to not allow public access to his personal information. Therefore, if the former employee timely elected to withhold his personal information, the

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<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).


district must withhold the information we have marked on pages 000004 and 000028 pursuant to section 552.117(a)(1) of the Government Code. If the former employee did not timely elect to withhold this information, then the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, with the exception of the former employee's name, courses taken, and degree obtained, the district must withhold pages 000006 through 000010 and 000014 through 000016 pursuant to section 552.102(b) of the Government Code. The district must withhold under section 552.101 of the Government Code page 000003 in conjunction with sections 411.0845 and 411.097(d) of the Government Code; pages 000001 and 000011 through 000013 in conjunction with section 21.048(c-1) of the Education Code; and pages 000017 through 000027 and 000029 through 000058 in conjunction with section 21.355 of the Education Code. The district must withhold the blood type we have marked on page 000004 under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas driver's license information we have marked on page 000004 under section 552.130 of the Government Code. If the former employee timely elected to withhold his personal information, the district must withhold the information we have marked on pages 000004 and 000028 pursuant to section 552.117(a)(1) of the Government Code. Otherwise, the marked information must be released, along with the remaining information, but any information protected by copyright must be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 412465

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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